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A Limited Liability Law Partnership

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SHAKA TIME, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

TRENDTEX FABRICS, LTD.,

Plaintiff,

vs.

**NTKN, INC., a Hawaii corporation;
HUNG KY, an individual; SHAKA
TIME, INC., a Hawaii corporation;
TROIPIHOLIC, INC., a Florida
corporation,**

Defendants.

) **CIVIL NO.: 1:22-cv-00287-LEK-KJM**
)
) **DEFENDANT SHAKA TIME, INC.'S**
) **ANSWER TO FIRST AMENDED**
) **COMPLAINT FOR COPYRIGHT**
) **INFRINGEMENT, FILED ON**
) **AUGUST 15, 2022 and DEMAND FOR**
) **JURY TRIAL; DEFENDANT SHAKA**
) **TIME, INC.'S CROSS-CLAIM**
) **AGAINST DEFENDANTS NTKN,**
) **INC., HUNG KY AND TROIPIHOLIC,**
) **INC.; SUMMONS; CERTIFICATE OF**
) **SERVICE**
)

**DEFENDANT SHAKA TIME, INC.’S ANSWER TO
FIRST AMENDED COMPLAINT FOR COPYRIGHT
INFRINGEMENT, FILED ON AUGUST 15, 2022**

Comes now Defendant SHAKA TIME, INC. (hereinafter referred to as “Defendant SHAKA TIME”), by and through its attorneys, YAMAMOTO KIM LLP, and for an answer to the First Amended Complaint for Copyright Infringement heretofore filed in the above-entitled matter, alleges and avers as follows:

FIRST DEFENSE - ALL COUNTS

1. The First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE - ALL COUNTS

2. Defendant SHAKA TIME denies the allegations contained in Paragraphs 25, 26, 48, 49, 55, 71, 72, 78, 94, 95, 101, 117, 118, 123, 140, 141, 147, 184, 185, 208, 209, 215, 252, 253, 259, 275, 276, 300, 301, 307, 343, 344, 350, 443, 444, 481, 482, 520 and 521 of the First Amended Complaint.

3. Defendant SHAKA TIME denies the allegations contained in Paragraphs 1, 23, 24, 27, 28, 29, 30, 32, 38, 39, 40, 41, 46, 47, 50, 51, 52, 53, 61, 62, 63, 64, 69, 70, 73, 74, 75, 76, 84, 85, 86, 87, 92, 93, 96, 97, 98, 99, 107, 108, 109, 110, 115, 116, 119, 120, 121, 124, 130, 131, 132, 133, 138, 139, 142, 143, 144, 145, 153, 154, 155, 156, 182, 183, 186, 187, 188, 189, 191, 198, 199, 200,

201, 206, 207, 210, 211, 212, 213, 221, 222, 223, 224, 250, 251, 254, 255, 256, 257, 265, 266, 267, 268, 273, 274, 277, 278, 279, 280, 282, 289, 290, 291, 292, 298, 299, 302, 303, 304, 305, 312, 313, 314, 315, 341, 342, 345, 346, 347, 348, 356, 357, 358, 359, 441, 442, 445, 446, 447, 448, 453, 454, 455, 456, 479, 480, 483, 484, 485, 486, 491, 492, 493, 494, 518, 519, 522, 523, 524, 525, 530, 531, 532 and 533 of the First Amended Complaint as they pertain to Defendant SHAKA TIME, and Defendant SHAKA TIME neither admits nor denies the remaining allegations contained in said Paragraphs, since there presently is insufficient knowledge or information to form a belief as to the truth of these allegations.

4. Defendant SHAKA TIME neither admits nor denies, since there presently is insufficient knowledge or information to form a belief as to the truth of these allegations, the allegations contained in Paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 20, 21, 22, 31, 33, 34, 35, 36, 37, 43, 44, 45, 54, 56, 57, 58, 59, 60, 66, 67, 68, 77, 79, 80, 81, 82, 83, 89, 90, 91, 100, 102, 103, 104, 105, 106, 112, 113, 114, 122, 125, 126, 127, 128, 129, 135, 136, 137, 146, 148, 149, 150, 151, 152, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 179, 180, 181, 190, 192, 193, 194, 195, 196, 197, 203, 204, 205, 214, 216, 217, 218, 219, 220, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 247, 248, 249,

258, 260, 261, 262, 263, 270, 271, 272, 281, 283, 284, 285, 286, 287, 288, 294, 295, 296, 297, 306, 308, 309, 310, 311, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 338, 339, 340, 349, 351, 352, 353, 354, 355, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 439, 440, 449, 450, 451, 452, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 477, 478, 487, 488, 489, 490, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 515, 516, 517, 526, 527, 528 and 529 of the First Amended Complaint.

5. The allegations contained in Paragraphs 5, 15 and 16 of the First Amended Complaint are admitted.

6. With regard to the allegations contained in Paragraph 19 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 18, as set forth more fully hereinabove.

7. With regard to the allegations contained in Paragraph 42 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 41, as set forth more fully hereinabove.

8. With regard to the allegations contained in Paragraph 65 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 64, as set forth more fully hereinabove.

9. With regard to the allegations contained in Paragraph 88 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 87, as set forth more fully hereinabove.

10. With regard to the allegations contained in Paragraph 111 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 110, as set forth more fully hereinabove.

11. With regard to the allegations contained in Paragraph 134 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 133, as set forth more fully hereinabove.

12. With regard to the allegations contained in Paragraph 157 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 156, as set forth more fully hereinabove.

13. With regard to the allegations contained in Paragraph 178 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 177, as set forth more fully hereinabove.

14. With regard to the allegations contained in Paragraph 202 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 201, as set forth more fully hereinabove.

15. With regard to the allegations contained in Paragraph 225 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 224, as set forth more fully hereinabove.

16. With regard to the allegations contained in Paragraph 246 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 245, as set forth more fully hereinabove.

17. With regard to the allegations contained in Paragraph 269 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 268, as set forth more fully hereinabove.

18. With regard to the allegations contained in Paragraph 293 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 292, as set forth more fully hereinabove.

19. With regard to the allegations contained in Paragraph 316 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 315, as set forth more fully hereinabove.

20. With regard to the allegations contained in Paragraph 337 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 336, as set forth more fully hereinabove.

21. With regard to the allegations contained in Paragraph 360 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 359, as set forth more fully hereinabove.

22. With regard to the allegations contained in Paragraph 380 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 379, as set forth more fully hereinabove.

23. With regard to the allegations contained in Paragraph 399 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 398, as set forth more fully hereinabove.

24. With regard to the allegations contained in Paragraph 419 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 418, as set forth more fully hereinabove.

25. With regard to the allegations contained in Paragraph 438 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 437, as set forth more fully hereinabove.

26. With regard to the allegations contained in Paragraph 457 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 456, as set forth more fully hereinabove.

27. With regard to the allegations contained in Paragraph 476 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 475, as set forth more fully hereinabove.

28. With regard to the allegations contained in Paragraph 495 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 494, as set forth more fully hereinabove.

29. With regard to the allegations contained in Paragraph 514 of the First Amended Complaint, Defendant SHAKA TIME repeats and realleges its answers to Paragraphs 1 through 513, as set forth more fully hereinabove.

30. All allegations not specifically referred to hereinabove are denied.

31. With regard to Plaintiff's "Prayer for Relief" in the First Amended Complaint, Defendant SHAKA TIME denies all of those prayers for relief as they pertain to SHAKA TIME.

THIRD DEFENSE - ALL COUNTS

32. Defendant SHAKA TIME gives notice that it reserves the right to raise the defense of lack of copyright registration or fatally defective copyright

registration. To the extent that the copyright registrations relied upon by Plaintiff are inapplicable or fatally defective, this Court lacks jurisdiction over the subject matter of this action.

FOURTH DEFENSE - ALL COUNTS

33. Defendant SHAKA TIME gives notice that it reserves the right to raise the defense that Plaintiff lacks of standing to bring the alleged claims or that Plaintiff's claims are otherwise non-judicial. To the extent that Plaintiff lacks standing to bring the alleged claims, or the claims are otherwise non-judicial, this Court lacks jurisdiction over such claims.

FIFTH DEFENSE - ALL COUNTS

34. Defendant SHAKA TIME gives notice that it reserves the right to raise the defenses of insufficiency of process, insufficiency of service of process, and failure to join an indispensable party and/or that Plaintiff's claimed damages, or some of them, are barred by the applicable statute of limitations.

SIXTH DEFENSE - ALL COUNTS

35. Defendant SHAKA TIME gives notice that it reserves the right to raise the defenses of consent, waiver, release, abandonment, assumption of risk, laches, acquiescence, rescission, abrogation, accord and satisfaction, license, implied license, and/or consent, acquiescence set-off or off-set and detrimental reliance.

SEVENTH DEFENSE - ALL COUNTS

36. Defendant SHAKA TIME gives notice that it reserves the right to raise the defenses of unconscionability, illegality, mistake, estoppel, copyright misuse, fraud on the Copyright Office, unclean hands, waiver entrapment, and enticement and that Plaintiff is barred from obtaining any of the relief it seeks herein by the defense of the malice, intent, knowledge or other condition of the mind of Plaintiff.

EIGHTH DEFENSE - ALL COUNTS

37. Defendant SHAKA TIME gives notice that it reserves the right to raise the defense that Plaintiff abandoned any copyright inhering in the subject designs and/or that the subject designs are in the public domain.

NINTH DEFENSE - ALL COUNTS

38. Defendant SHAKA TIME gives notice that it reserves the right to raise the defenses of fair use and/or *de minimus* infringement.

TENTH DEFENSE - ALL COUNTS

39. Defendant SHAKA TIME gives notice that it reserves the right to raise the defenses of lack of requisite knowledge and/or intent to create liability and that Defendant SHAKA TIME acted with innocent intent and/or in good faith.

ELEVENTH DEFENSE - ALL COUNTS

40. If Plaintiff was injured or damaged as alleged in the First Amended Complaint, such injuries or damages were proximately caused by acts or omissions of Plaintiff and/or its affiliates, or other parties over whom Defendant SHAKA TIME has no control and for which it bears no responsibility or liability, and not by the acts or omissions of Defendant SHAKA TIME.

TWELFTH DEFENSE - ALL COUNTS

41. Plaintiff has an adequate remedy at law and injunctive relief is not warranted in the circumstances of this case.

THIRTEENTH DEFENSE - ALL COUNTS

42. Plaintiff failed to mitigate its damages and accordingly may be barred, in whole or in part, from recovery herein.

FOURTEENTH DEFENSE - ALL COUNTS

43. Plaintiff has failed to set forth its claims with sufficient particularity to allow Defendant SHAKA TIME to raise all appropriate defenses, and therefore, Defendant SHAKA TIME reserves its right to amend or supplement this answer with additional affirmative defenses.

FIFTEENTH DEFENSE - ALL COUNTS

44. Defendant SHAKA TIME intends to rely upon the defense that liability to Plaintiff, if any, is that of persons or entities other than Defendant SHAKA TIME.

SIXTEENTH DEFENSE - ALL COUNTS

45. Defendant SHAKA TIME gives notice that it intends to rely on the defense of lack of causation.

SEVENTEENTH DEFENSE - ALL COUNTS

46. Defendant SHAKA TIME gives notice that it intends to rely upon the defense that Plaintiff's claims, in whole or in part, are barred by the applicable statute of limitations, including 17 U.S.C.S. § 507.

EIGHTEENTH DEFENSE - ALL COUNTS

47. Defendant SHAKA TIME gives notice that it intends to rely upon the defense that Defendant SHAKA TIME's actions were innocent, non-infringing, and not a willful infringement of copyright.

NINETEENTH DEFENSE - ALL COUNTS

48. Defendant SHAKA TIME gives notice that it intends to rely upon any other matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Federal Rules of Civil Procedure, and that it intends to seek

leave to amend its answer to specifically allege those defense of which it may become aware during the course of discovery or trial of this matter.

WHEREFORE, Defendant SHAKA TIME prays that the suit be dismissed and Defendant SHAKA TIME be awarded its costs herein, including reasonable attorney's fees and/or that the jury find the degree of comparative fault of all parties and that the damages awarded the Plaintiff be discounted by an amount directly proportional to the total damages as the proportion of the Plaintiff's fault is to the total fault that caused the injury and/or damages and that judgment be entered herein in favor of Defendant SHAKA TIME for such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawaii, August 26, 2022.

/s/ Randall Y. Yamamoto
RANDALL Y. YAMAMOTO
Attorney for Defendant
SHAKA TIME, INC.

DEMAND FOR JURY TRIAL

Defendant SHAKA TIME, INC. hereby demands trial by jury on all
issues.

DATED: Honolulu, Hawaii, August 26, 2022.

/s/ Randall Y. Yamamoto
RANDALL Y. YAMAMOTO
Attorney for Defendant
SHAKA TIME, INC.